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C.R.P.(PD).Nos.5062, 5064, 5065 & 5073 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).Nos.5062, 5064, 5065 & 5073 of 2024

and

C.M.P.Nos.28386, 28392, & 26706 of 2023

P.Nagarathinam

... Petitioners in all CRPs

..Vs..

A.Thomas

... Respondent in all CRPs

PRAYER in CRP No.5062/2024: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the order dated 04.11.2024 made in A diary abstract of O.S.No.593 of 2022 allowing the petition to recall chief examination of P.W.1 in I.A.No.10 of 2024, by the learned VII Additional City Civil Judge, Chennai.

PRAYER in CRP No.5064/2024: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the order dated 11.11.2024 made in A diary abstract of O.S.No.593 of 2022 rejecting the petition in I.A.(SR).No.70908 of 2024 in I.A.No.10 of 2024 in O.S.No.593



of 2022, by the learned VII Additional City Civil Judge, Chennai.

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PRAYER in CRP No.5064/2024: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the docket order dated 04.11.2024 made in A diary abstract of O.S.No.593 of 2022 allowing the petition to receive additional documents in I.A.No.11 of 2024, by the learned VII Additional City Civil Judge, Chennai.

PRAYER in CRP No.5073/2024: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the order dated 11.11.2024 made in A diary abstract of O.S.No.593 of 2022 rejecting the petition in I.A(SR).No.70909 of 2024, by the learned VII Additional City Civil Judge, Chennai.

For Petitioner in all CRPs : Mr.S.R.Raghunathan
For Ms.R.J.Radhika

COMMON ORDER

O.S.No.593 of 2024 is a suit for Specific Performance of an alleged agreement of sale. The sole defendant filed his written statement and is contesting the suit. The parties were thereafter pushed to trial. P.W.1 entered the witness box and marked certain documents. He was cross-



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examined in detail by the learned counsel appearing for the defendant and his evidence was closed. It was posted for further evidence on the side of the plaintiff. At that stage, the plaintiff filed applications in I.A.No.10 of 2024 seeking to recall P.W.1 in order to mark the additional documents, which had been presented along with I.A.No.11 of 2024.

2. I.A.No.11 of 2024 is an application under Order VII Rule 14 (2) of the Code of Civil Procedure, seeking to let in the additional documents.

3. On 14.11.2024, the matter was called and the learned counsel for the defendant had made an endorsement saying the applications may be allowed. Consequently, the learned Judge allowed the applications on payment of cost of Rs.5,000/-. On the next date of hearing, the learned counsel refused to accept the cost stating that the counsel who had made the endorsement had not been instructed by the client to make the said endorsement. Consequently, the applications in I.A.SR.No.70908 of 2024 and I.A.No.70909 of 2024 were filed. The learned Judge by an order dated 11.11.2024 rejected both petitions at the numbering stage itself. These



revision challenging (i) the order allowing the application to recall P.W.1 and permitting him to mark additional documents and (ii) rejecting their petitions to recall the order passed on 04.11.2024.

4. I heard Mr.S.R.Raghunathan for the civil revision petitioner.

5. Mr.S.R.Raghunathan invites my attention to the affidavit filed in support of the recall petitions. He points out that there was a misinformation from the counsel on record to the counsel, who had made the endorsement of “no objection”. Further, he urges that both of them had not got instructions from the client prior to making the said endorsement. He points out from the cross examination of P.W.1 that P.W.1 had made certain statements in the cross examination, which are sought to be covered by filing the present petitions. To be specific, he states that P.W.1 had stated that there is no proof of payment of Rs.10 lakhs, whereas, today, he is attempting to produce a colour photocopy of a bank draft and a letter, as if the defendant, had accepted the payment of Rs.10 lakhs. He points out that these infirmities in the evidence of P.W.1 are sought to be covered by filing



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the applications and therefore, it requires interference. He further urges that since the endorsement made by the counsel is without instructions, he is entitled to file an application to recall the said order and therefore, the learned Trial Judge erred in rejecting those petitions.

6. I have carefully considered the submissions of Mr.S.R.Raghunathan.

7. The defendant had an opportunity to oppose the applications. Yet the counsel, who represented the counsel for the defendant, on that day, had made an endorsement that the defendant has “no objection” for the applications being allowed. If that be the situation, then, the Court, in my view did not commit an error in allowing the application. The Court does not play an active role in the case of the plaintiff or in the defense that is set up by the defendant. It is a neutral arbiter of rights.

8. When the contesting party himself does not have an objection for the application being allowed and that is communicated to the Court



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through the counsel, the Court did not commit any error in recording the said endorsement and allowing the application. When a party has no objection to the application being allowed, I am afraid the very same party cannot come before the Court and challenge the said order.

9. An order recording the endorsement made by the counsel, cannot be called in question, as it is not a wrong recording of facts. In case, the Court had wrongly recorded an endorsement, it is certainly open to a party aggrieved by such recording to approach the very same Court to point out that the recording by the Court is wrong. That is not the plea here.

10. The plea of the defendant is that there was a miscommunication from one counsel to an other counsel and that the endorsement had been made without the consent of the party. The plea, that it was in the basis of wrong information that endorsement was made itself concedes, to the endorsement having been made. A counsel has implied authority to either oppose an application or to contest the same. This position has already been settled by the ***Hon'ble Mr. Justice S.S.Subramani*** in ***Mangayarkarasi vs.***



Suseela and Others AIR 2000 Madras 266. In exercise of that implied authority, the counsel had made the endorsement.

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11. As pointed out above, the recording of endorsement is not improper. What is called in question is the authority of the counsel who made the said endorsement. That is not within the premise of the Court to enquire. The arrangement made *inter se* the counsel cannot be a subject matter of enquiry. Therefore, I do not find any error of the learned Judge recording the “no objection” and allowing the application and refusing to set aside the same.

12. According to Mr.S.R.Raghunathan, the documents that are sought to be produced before the Court are photostat copies and acts of forgery.

13. It is always open to the defendant to file an application to send the document, which they deny as forgery, for examination to the Forensic Science Laboratory along with their admitted signatures once the documents are exhibited. I am certain, if such an application is filed, the Court will



certainly entertain it and pass orders on the merits of the application.

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14. It is always open to the defendant to cross examine the plaintiff on the lack of pleadings regarding the fresh documents as well as on the genuineness and relevancy of those documents. If the documents are an attempt to withdraw the admissions already made, the Trial Court is entitled to prevent such withdrawal of admissions. As the order receiving the documents does not *per se* prejudice the right of the defendant, leaving it open to him to adopt the appropriate measures necessary dealing with the relevancy, genuineness and admissibility of the documents, these revisions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

16.12.2024

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Index : Yes

Internet : Yes

Neutral Citation Case: Yes/No



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- To
1. The VII Additional City Civil Judge,
Chennai.



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V.LAKSHMINARAYANAN, J.

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